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7

8 UNITED STATES BANKRUPTCY COURT

9 EASTERN DISTRICT OF CALIFORNIA

10 SACRAMENTO DIVISION

11  
12 In re: } Chapter 7  
13 HARLAN THOMAS, } Bankruptcy Case No.: 10-40912-A-7  
14 Debtor, } Adversary Case No: 10-02716-A  
DC#: BAM-1

15 HERITAGE PACIFIC FINANCIAL, }  
16 LLC d/b/a HERITAGE PACIFIC }  
17 FINANCIAL, a Texas Limited Liability }  
Company,

18 Plaintiff,

19 v.

20 HARLAN THOMAS,

21 Defendant.

22  
23 **DECLARATION OF MARK G.  
SCHUERMAN IN SUPPORT OF  
PLAINTIFF'S MOTION FOR  
DEFAULT JUDGMENT**

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2                   DECLARATION OF MARK G. SCHUERMAN

3       I, Mark Schuerman, declare as follows:

4       1.       I have personal knowledge of the matters stated herein, and if I were called as a  
5 witness, I would competently testify to the matters stated herein. I have been retained as an  
6 expert in this matter for Plaintiff Heritage Pacific, LLC dba Heritage Pacific Financial and have  
7 reviewed the 1003 Application and promissory note.

8       2.       I am an MCS Associates consulting expert. I am broadly experienced in real  
9 estate lender and mortgage banking, and have served as a banking executive for thirty (30) years  
10 in loan origination, sales, administration and top management positions in the home equity and  
11 2<sup>nd</sup> TD real estate lending industry. I have substantial experience in the establishment and  
12 management of residential loan production programs, secondary marketing and loan  
13 administration/servicing. I am a nationally known leader in the home equity lending industry  
14 and have served frequently as a mortgage banking consultant and expert witness on mortgage  
15 banking, secondary marketing and loan administration matters.

16       3.       I established and direct American MortgageBanc, a mortgage banker producing  
17 and selling residential mortgage loans throughout California, and I am also President of Lenders  
18 Survey Services, Inc., a company I founded in 1993, which conducts loan audits and customer  
19 surveys to assist lenders in customer service/relationship issues, regulatory compliance and  
mortgage fraud detection.

20       4.       From 1995 through March 1998, I was President of Royal MortgageBanc, a  
21 California-based banking company that Conti Mortgage (a national leader in the home equity  
22 lending industry) acquired in 1995.

23       5.       From 1992 to 1995, I was President of Royal Thrift & Loan, where I directed the  
24 thrift's lending and funding operations, including all loan origination, underwriting, secondary  
25 marketing, loan servicing and loan administration. I also established a new loan origination  
26 network of brokers and loan offers in California, Washington and Arizona, originating up to  
27 \$300 million annually.

1       6. From 1986 to 1991, I served as Chief Operating Officer of Long Beach Bank's  
2 Residential Lending Division, which I established in 1986 and which I guided in pioneering their  
3 role as a sub-prime consumer finance lender originating and placing loans in the secondary  
4 markets. I directed the opening and management of a national origination network of loan  
5 offices and broker relationships, development of a large centralized secondary marketing, loan  
6 servicing and support group, and establishment of policies, procedures, operational and quality  
7 controls and systems for an organization with annual production of \$1 billion in 1991, with over  
8 \$1.2 billion in securitized loan sales.

9       7. During 1980-1985, I directed a mortgage lending program for Anaheim Savings,  
10 and was subsequently involved in the reorganization of Glenfed Mortgage's lending operations.  
11 I then served as a mortgage banking consultant to mortgage banking organizations with MCS  
12 Associates, where I directed and performed production, operations, systems and product/services  
13 design and evaluation projects for large and small mortgage banking units of banks, thrifts and  
14 independent mortgage bankers.

15       8. From 1973 to 1980, I held positions in mortgage loan originations with Cameron  
16 Brown Company and subsequently as head of 2<sup>nd</sup> trust deed lending at Advance Mortgage Corp.

17       9. I hold a MBA degree in Finance and Real Estate from Indiana University, a  
18 Bachelor of Science degree in Economics from Miami University (Ohio) and I am a licensed  
19 California Real Estate Broker. I serve as a Board Member of the National Home Equity  
20 Mortgage Association, and served as the former President of the Inland Empire Mortgage  
21 Bankers' Association.

22       10. This declaration (and the statements contained herein) are made without waiving  
23 any attorney-client privilege (as plaintiff's attorney's consultant), work product privilege, or any  
24 other privilege which may apply as a result of the attorney's consultation of the plaintiff by the  
25 law firm of Mokri & Associates, and is not intended to, and shall not be deemed to, waive any  
26 attorney client privilege, work product privilege, or any other privilege which may arise under  
27 statute or common law.

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1       11. There are established customs and practices within the mortgage lending industry,  
2 when it comes to relying on stated income. At the time these loans are entered into, the lender  
3 expects to only hold that note for thirty (30) to ninety (90) days before selling that note to an  
4 investor, who then has a successor interest. The buyers of these notes rely on the stated income  
5 and representations made in the 1003 Applications when purchasing these notes from the  
6 original lenders.

7       12. I have examined the 1003 Applications that Plaintiff relies on. This 1003  
8 Application, otherwise called a "Uniform Residential Loan Application" is used by all lenders in  
9 the industry. Paragraph IX, "Acknowledgement and Agreement" states:

10                 "Each of the undersigned specifically represents to Lender and to Lender's  
11 actual or potential agents, brokers, processors, attorneys, insurers, servicers, successors  
12 and assigns and agrees and acknowledges that: (1) the information provided in this  
13 application is true and correct as of the date set forth opposite my signature and that  
14 any intentional or negligent misrepresentation of this information contained in this  
application may result in civil liability, including monetary damages, to any person who  
may suffer any loss due to reliance upon any misrepresentation that I have made on this  
application...."

Paragraph IX, "Acknowledgement and Agreement" further states:

16                    "...(6) the Lender, its servicers, successors or assigns may rely on this  
17 information contained in the application..."

18        This paragraph is included in every 1003 Application and is heavily relied upon in the  
19        industry by lenders and successors in interest. This clause is a crucial aspect of the mortgage  
20        lending industry. It is my professional opinion that without this clause and the established  
21        practices and procedures accompanied it; the industry would not have functioned. If changed, the  
22        industry would cease to exist. There would be no incentive for a secondary market investor to  
23        purchase these notes, as the risk would be too great for the associated financial reward.

24       13. Plaintiff operates in the secondary mortgage market. When purchasing loans on  
25 the secondary market, Plaintiff relies only on the information provided on the loan application  
26 and the stated income, which is typical in the mortgage industry. The secondary market is highly

1 negotiable and any fraudulent misrepresentations of material facts contained in a 1003  
2 Application would have a greater adverse effect on a second trust deed holder than on a first trust  
3 deed holder because the second trust deed holder is essentially at the mercy of the first trust deed  
4 holder. The second trust deed holder therefore heavily relies on the stated income, employment,  
5 assets and debts of the borrower in the 1003 Application so that in the event of foreclosure by the  
6 senior lienor, the borrower is still capable of paying on the second trust deed note.

7       14. By signing the "Acknowledgement and Agreement" clause each borrower is  
8 representing to not only the original lender, but all subsequent owners of the note, that the  
9 information contain within the 1003 Application is true. By signing this acknowledgement, the  
10 borrower is intending that not only the original lender rely of the information contained in the  
11 application, but that all successors in interest and assigns also rely on this information.

12       15. It is my professional opinion that if more direct lenders and secondary market  
13 investors sought to enforce this clause, it would deter applicants from providing false  
14 information, and only those who were truly within their means would be approved.

15       16. After reviewing this case, it is clear that a second deed of trust was extended to  
16 Defendant to secure payment of part of the purchase price of real property. It is my professional  
17 opinion that when a junior lienholder holds a second deed of trust, that junior lienholder is not  
18 protected upon foreclosure under the sale powers contained within the first deed of trust.

19       17. When a senior lienholder forecloses on a property, that selling senior can bid at  
20 the sale in an amount equal to his claim against the debtor or the fair market value, whichever is  
21 less. A senior need not expend or invest any additional funds to do so. By contrast, a junior  
22 lienholder would have to invest additional funds to redeem or buy in at the sale. The property  
23 securing the second deed of trust upon foreclosure by the senior lienholder is thereby rendered  
24 valueless and the only recourse available to the junior lienholder is to bring an action to recover  
25 the debt; or as is the case here to sue based upon fraud where the borrower has misrepresented  
26 material facts in the 1003 Application.

1 I declare under penalty of perjury that the foregoing is true and correct or my professional  
2 opinion and this declaration was executed under the law of the State of California and the United  
3 States of America.

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5 DATED: March 28, 2011.

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Declarant, Mark G. Schuerman

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